



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/748,017

12/29/2003

Sanjoy Ganguly

S9025.0282

6508

32172

7590

07/25/2008

DICKSTEIN SHAPIRO LLP
1177 AVENUE OF THE AMERICAS (6TH AVENUE)
NEW YORK, NY 10036-2714

EXAMINER

SAMALA, JAGADISHWAR RAO

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

07/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/748,017</p>	<p>Applicant(s) GANGULY ET AL.</p>	
	<p>Examiner JAGADISHWAR R. SAMALA</p>	<p>Art Unit 1618</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-12 and 17-32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 07/11/2008
13. ☒ Other: Application number is miss spelled. Appropriate correction is needed.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

Jagadishwar R Samala
Examiner
Art Unit: 1618

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument is not persuasive for the reasons below. Applicant argues the Fu reference does not teach cosmetic composition containing a coated mica nacreous pigment in which the mica is a synthetic mica having a particle size ranging from about 150 to 500 microns and also no teaching of any cosmetic composition selected from groups set forth in claim 26. This argument is not persuasive because the outcome achieved by instant application and prior art is substantially same (i.e. Fu teach a cosmetic composition comprising natural or synthetic mica such as muscovite, phlogopite and biotite coated with nacreous pigment such as titanium dioxide having a particle size in range of 5 to 400 microns, see col. 2 line 41-65 and also claims 2 and 12). And also Fu discloses that a promising area of application of this composition is in areas such as cosmetics, food stuffs and food contact applications. Thus claimed invention is inherently possessed or co-existing with physiochemical properties such as gloss, whiteness, compressibility, transparency, and brightness as the composition set forth in the instant application.

Applicant also argues that Fu in view of Calello does not teach cosmetic composition having better gloss and shine properties. This argument is not persuasive since Calello reference is relied upon for its teachings of knowledge in the art of cosmetic composition, particularly a lipstick, with long lasting adherence to skin which also has gloss and shine properties. On the same lines Watanabe reference is relied upon to establish that it is obvious to coat mica nacreous pigments of various particle sizes to make the composition more gloss and color power and good transparency and dispersibility (see col. 4 line 30-65). Similarly Kimura reference is relied upon to establish that it is obvious to coat mica nacreous pigments of various particle sizes to provide a titanium-mica composite material exhibits excellent color, tone (e.g. chroma and brightness), good consistency of an appearance color and excellent stability.

Applicant also argues that Fu in view of Miyoshi fails to disclose a cosmetic composition with synthetic fluorophlogopite mica. This argument is not persuasive since Miyoshi teaches a composite powder based on substrate particles such as talc, mica, sericite, kaolin and synthetic fluorophlogopite mica coated with micronized metal oxides particles (see col. 3 line 12-16). And the reference is relied upon to establish the knowledge in the art to develop a process or to formulate cosmetic compositions that can be used specifically, as compressed powder cosmetics effective in protecting the skin against UV rays. Thus, the claimed invention is not patentably distinct from the prior art of the record.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618